

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE U.S. DEPARTMENT OF AGRICULTURE  
AND  
THE U.S. ARMY CORPS OF ENGINEERS**

**ARTICLE I - PURPOSE AND AUTHORITY**

This Memorandum of Agreement (MOA) is entered into by and between the U.S. Department of Agriculture and its agencies (USDA) and the U.S. Army Corps of Engineers (USACE) (collectively, “the Parties”) for the purpose of establishing a framework governing the USACE’s provision of USACE goods and services to support USDA’s environmental cleanup and restoration program. This MOA is entered into pursuant to the Economy In Government Act (“Economy Act”), 31 U.S.C. § 1535.

**ARTICLE II - SCOPE**

Goods and services which USACE may provide under this MOA will assist USDA in its environmental cleanup and restoration projects undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601, *et seq.*, and the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901, *et seq.*, and assist USDA in any other action USDA considers necessary to accomplish its environmental cleanup and restoration program. Work may include, but is not limited to, the following types of activities:

- Performance of investigations, studies and cost analyses pursuant to CERCLA.
- Preparation of Sampling and Analysis Plans (SAP) for submission to the United States Environmental Protection Agency (EPA) for approval and determination of level and extent of contamination and identification of contamination pathways and targets at risk in accordance with EPA protocol.
- Preparation of engineering plans and specifications.
- Performance of construction support activities, including preparation of final construction reports, post construction monitoring plans, and operation and maintenance plans.
- Design of response actions, containment facilities and reclamation alternatives for

handling and/or removal of contaminated waste or site restoration.

- Preparation of risk assessments and Quality Control/Quality Assurance Plans.
- Work in support of natural resource damage assessments; the development and implementation of natural resource restoration actions designed to restore or rehabilitate damaged natural resources; the preparation of community relations plans and action memoranda; construction inspection; inventory of suspected CERCLA sites; and other related studies and field work.

Nothing in this MOA shall be construed to require USDA to use the services of USACE or to require USACE to provide any goods or services to USDA, except as may be set forth in Support Agreements (SAs).

### **ARTICLE III - INTERAGENCY COMMUNICATIONS**

To provide for consistent and effective communication between USDA and USACE, each Party shall appoint a Principal Representative to serve as its central point of contact on matters relating to this MOA. Additional representatives will also be appointed to serve as points of contact on SAs.

### **ARTICLE IV - SUPPORT AGREEMENTS (AND IMPLEMENTING ARRANGEMENTS)**

In response to requests from USDA for USACE assistance under this MOA, USACE and USDA shall conclude mutually agreed upon written SAs, which shall include the following:

- Detailed scope of work statement.
- Scheduling for completion of work.
- Work quality control criteria and procedures that detail the level of acceptable performance for USACE.
- Funding arrangements that are consistent with Article VI Funding requirements, including whether payment shall be advance or by reimbursement.
- The amount of funds required and available to accomplish the scope of work as stated.
- USDA's fund citation and the date upon which the cited funds expire for obligation purposes.
- Identification of individual project representatives.

The following must be addressed in each SA signed by each Party's project representative:

- Identification of the types of contracts to be used (if known).
- Types and frequency of reports to be provided.
- Identification of which party is to be responsible for government-furnished equipment, contract administration, records maintenance, any special records maintenance requirements, rights to data, software and intellectual property, and contract audits.
- Procedures for amending or modifying the SA.
- Such other particulars as are necessary to describe clearly the obligations of the Parties with respect to the requested goods and services.

Goods or services shall be provided under this MOA only after an appropriate SA has been signed by a representative of each Party authorized to execute that SA. Upon signature by each Party's representative, a SA shall constitute a valid Economy in Government Act order. In the case of conflict between this MOA and an SA or an implementing arrangement, this MOA shall control.

## **ARTICLE V - RESPONSIBILITIES OF THE PARTIES**

### **A. Responsibilities of USACE:**

1. USACE represents that it has the capability, experience, means and appropriate licenses and permits required to perform the services contemplated by this MOU.
2. USACE shall provide USDA with goods or services in accordance with the purpose, terms, and conditions of this MOA; guidelines established in implementing arrangements; and with specific requirements set forth in SAs.
3. USACE shall ensure that only authorized USACE representatives sign SAs and implementing arrangements.
4. USACE shall use its best efforts to provide goods or services either by contract or by in-house effort.
5. USACE shall provide detailed periodic progress, financial and other reports to the USDA as agreed to in the SA or implementing arrangements. Financial reports shall include information on all funds received, obligated, and expended, and on forecast obligations and expenditures.

6. USACE shall inform USDA of all contracts entered into under each SA.

7. USACE shall undertake performance of the services provided under this MOA with due diligence, and take all necessary and reasonable precautions to ensure the safety of all persons involved in or related to the performance of the services.

8. In the event that USACE contracts for work, USACE shall provide USDA with the opportunity to review and comment on all Statements of Work for such contracts.

9. USACE shall have and shall retain full control of any contractor used, and shall be responsible for the performance of all contracted portions of the services. Subject to Article V.B.2 of this MOA, USACE shall not be relieved of the responsibility for the proper performance and completion of services that are contracted.

**B. Responsibilities of USDA:**

1. USDA shall certify, prior to the execution of each SA under this MOA, that the SA complies with the requirements of the Economy Act.

2. USDA shall pay all costs associated with USACE's provisions of goods or services under this MOA.

3. USDA will ensure only authorized USDA representative's sign implementing arrangements.

4. USDA shall draft SAs, to include scope of work statements.

5. USDA shall certify, at the time of signature of an SA, the availability of funds necessary to accomplish that SA.

6. USDA shall obtain for USACE all necessary real estate interests and access to all work sites and support facilities, and shall perform all coordination with and obtain any permits from state and local agencies, as necessary during the execution of each SA.

**ARTICLE VI - FUNDING**

A. Pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341, and the Economy Act, 31 U.S.C. § 1535, as those statutes have been interpreted by the Comptroller General and may be interpreted by the Attorney General of the United States, USDA shall pay all actual costs associated with USACE's provision of goods or services under this MOA. For SAs valued at \$250,000 or less, USACE will bill USDA using Standard Form ("SF") 1080, Voucher for Transfers between appropriations and/or Funds, monthly as costs accrue. For SAs valued more than \$250,000 and where USDA has specific authority to transfer funds, USDA will prepare a

SF1151, Non-expenditure Transfer Authorization, and forward it through the Department of Treasury to Commander, US Army Corps of Engineers (District), ATTN: CE\_\_-RM. For those SAs greater than \$250,000 and where USDA has no transfer authority, USACE shall bill USDA in advance using SF1080.

B. USACE agrees that it will use its best efforts to remain within the level of funding defined under each SA. In furtherance of this goal, USACE shall review, prior to signing the SA, the scope of work to be accomplished pursuant to the SA and make its best estimate of the cost of goods and services to be provided pursuant to that SA. If the estimated cost exceeds USDA's available funding for that SA, USACE agrees to negotiate with USDA to adjust the scope of work to a level commensurate with USDA's available funding.

C. If, during the execution of an SA, USACE forecasts its actual costs under the SA to exceed the amount of funds available under that SA, it shall promptly notify USDA of the amount of additional funds necessary to complete the work under that SA. USDA shall either provide the additional funds to USACE, or require that the scope of work be limited to that which can be paid for by the then-available funds, or direct termination of the work under that SA.

D. Within 90 days of completing the work under an SA, USACE shall conduct an accounting to determine the actual costs of the work. Within 30 days of completion of this accounting, USACE shall return to USDA any funds advanced in excess of the actual costs as then known, or USDA shall provide any additional funds necessary to cover the actual costs of work as then known.

E. In the event that USACE's actual costs of work under this MOA exceed the funds legally available to USDA for the work (*i.e.*, the amount appropriated to USDA and the amount that USDA may lawfully transfer or reprogram to this account), USDA shall seek further appropriations from Congress in order to pay all such costs. USACE shall fully support USDA's request for further appropriations, including the provision of any testimony, information, and records necessary to support such a request.

## **ARTICLE VII - APPLICABLE LAWS**

USACE shall perform the services under this MOA in full and strict compliance with all applicable laws, regulations, rules, ordinances and orders of any governmental authority, including, without limitation, the provisions of all applicable federal and state environmental laws and regulations. USACE shall be responsible for and ensure that its contractors comply fully with all of the above laws, regulations, rules, ordinances, and orders of any governmental authority. Unless otherwise required by law, all work undertaken by USACE shall be governed by Department of the Army policies and procedures.

## **ARTICLE VIII - MANIFESTS AND RELATED DOCUMENTS**

A. USACE personnel may, with the approval of appropriate USDA personnel, execute all manifests and related documents, federal and state, on behalf of USDA that pertain to work performed under this MOA by USACE or its contractors. USACE personnel shall annotate the manifests and related documents with the phrase "On behalf of USDA." If applicable state regulations do not permit USACE to sign such documents on behalf of USDA, USACE shall contact USDA representative for specific guidance. Upon fiscal and physical completion of work under a SA, USACE shall forward manifests and related documents to USDA.

B. All contract-related documents, as well as workpapers, test results, records, reports, findings, recommendations, data, memoranda, drawings, specifications, or documents, (collectively, "documents") of any nature, and copies thereof, divulged to, received, used or generated by USACE pursuant to this MOA, shall be maintained in the possession of USACE at least as long as required by AR 25-400-2. When USACE determines that it no longer needs to keep an active file of the documents, USACE shall transfer all documents to USDA unless USDA states, in writing, that it has no need to maintain the documents. At that time, USACE shall dispose of the documents in accordance with AR 25-400-2. USACE shall provide any documents relating to this agreement to USDA at any time, upon request by USDA.

## **ARTICLE IX - CONTRACT CLAIMS AND DISPUTES**

A. All claims and disputes by USACE contractors arising under or relating to contracts awarded by USACE shall be resolved in accordance with federal law and the terms of the individual contract. USACE shall have dispute resolution authority for these claims. Any contracting officer's final decision may be appealed by the contractor pursuant to the Contract Disputes Act of 1978 (41 U.S.C. §§ 601-613). The U.S. Army Corps of Engineers Board of Contract Appeals ("ENG BCA"), or its successor, is designated as the appropriate board of contract appeals. In lieu of appealing to the ENG BCA, the contractor may bring an action directly to the United States Court of Federal Claims.

B. USACE shall be responsible for handling all litigation involving disputes and appeals, and for coordinating with the Department of Justice as appropriate. USACE shall notify USDA of any such litigation and afford USDA an opportunity to review and comment on the litigation proceedings and any resulting settlement negotiations.

## **ARTICLE X - DISPUTE RESOLUTION**

The Parties agree that, in the event of a dispute between the Parties, USDA and USACE shall use their best efforts to resolve that dispute in an informal fashion through consultation and communication, or other forms of non-binding alternative dispute resolution mutually acceptable to the Parties.

## **ARTICLE XI - LIABILITY**

If liability of any kind is imposed on the United States as a result of the USACE's provision of goods or services under this MOA, the USACE will accept accountability for its actions. For the purposes of this MOA, "accountability" shall mean the obligation to render an explanation for any action, but does not include the payment of costs.

## **ARTICLE XII - PUBLIC INFORMATION**

In general, USDA is responsible for all public information regarding USDA's projects. USACE may make public announcements and respond to all inquiries relating to the ordinary procurement and contract award and administration process. USDA or USACE shall make its best efforts to give the other Party advance notice before making any public statement regarding work contemplated, undertaken, or completed pursuant to SAs under this MOA.

## **ARTICLE XIII - MISCELLANEOUS**

### **A. Other Relationships or Obligations**

This MOA shall not affect any pre-existing or independent relationships or obligations between USDA and USACE.

### **B. Survival**

The provisions of this MOA which require performance after the expiration or termination of this MOA shall remain in force notwithstanding the expiration or termination of this MOA.

### **C. Severability**

If any provision of this MOA is determined to be invalid or unenforceable, the remaining provisions shall remain in force and unaffected to the fullest extent permitted by law and regulation.

## **ARTICLE XIII - AMENDMENT AND TERMINATION**

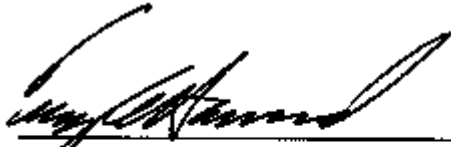
This MOA may be modified or amended only by written, mutual agreement of the Parties. Either Party may terminate this MOA by providing written notice to the other Party. The termination shall be effective upon the sixtieth calendar day following notice, unless a later date is set forth. In the event of termination, USDA shall continue to be responsible for all costs incurred by USACE under this MOA and for the costs of closing out or transferring any on-going contracts.

#### ARTICLE XIV – EFFECTIVE DATE

This MOA shall become effective when signed by both USDA and USACE.

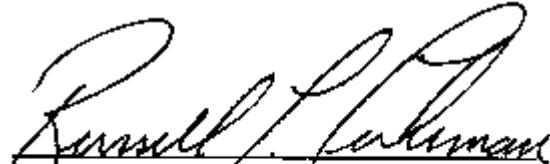
U.S. Department of Agriculture

U.S. Army Corps of Engineers



**Terry A. Harwood, Executive Director  
Hazardous Materials Policy Council**

DATE: 6/6/00



**Russell L. Fuhrman, Major General, USA  
Deputy Commander**

DATE: 30 May 2000